BRB No. 04-0645 BLA

EDDIE L. HATFIELD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HOBET MINING, INCORPORATED	)	DATE ISSUED: 05/26/2005
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand - Denial of Benefits of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Eddie L. Hatfield, Lenore, West Virginia, *pro se*.

Ashley M. Harmon and Douglas A. Smoot (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand – Denial of Benefits (01-BLA-0333) of Administrative Law Judge Robert J. Lesnick filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). This case is before the Board for the third time. The procedural history of the case is set forth in the Board's most recent decision in *Hatfield v. Hobet Mining Inc*., BRB No. 02-0796 BLA (Aug. 29, 2003)(unpub.). In that decision, the Board remanded the case for the administrative law judge to redetermine the weight of both the x-ray evidence at 20 C.F.R. §718.202(a)(1) and the medical opinion evidence at 20 C.F.R. §718.202(a)(4). The Board further instructed that, if the administrative law judge found the evidence sufficient to establish the existence of

pneumoconiosis at 20 C.F.R. §718.202(a)(1) or (a)(4), he must then consider all the relevant evidence together at 20 C.F.R. §718.202(a)(1)-(4) in accordance with *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), to determine whether the evidence is sufficient to establish the existence of pneumoconiosis. The Board further instructed the administrative law judge to reconsider, if reached, the evidence regarding total disability and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c).

On remand, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge further found that the x-ray and medical opinion evidence, when weighed together, did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202. The administrative law judge also found that, even if the existence of pneumoconiosis were established, the evidence was insufficient to establish that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b).[1] Further, the administrative law judge found that employer conceded that claimant was totally disabled due to a respiratory or pulmonary impairment. *See* Decision and Order at 2. Lastly, the administrative law judge found that, although the evidence established that claimant was totally disabled at 20 C.F.R. §718.204(b), it was insufficient to establish that claimant's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

In support of his appeal, claimant filed three statements in which he argues that the credible evidence of record establishes his entitlement to benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the

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[1] The Board previously affirmed the finding that claimant established thirteen and one-half years of coal mine employment. *Hatfield v. Hobet Mining, Inc.*, BRB No. 98-1024 BLA (May 27, 1999)(unpublished).

pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

We first review the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1). Claimant specifically contends that the x-ray evidence is sufficient to establish the existence of pneumoconiosis, as six physicians who interpreted x-rays of record "found signs of coal workers compensation." Claimant's June 9, 2004 Statement at 1. The x-ray evidence consists of twenty-six interpretations: twenty-four were negative, one was unreadable, and one was positive. Director's Exhibits 12, 14, 20-22, 32-36, 60, 64; Employer's Exhibits 1, 3, 6, 7, 10, 14. Thus, claimant's contention is contrary to the record and lacks merit. The administrative law judge correctly found that the sole positive x-ray reading, dated July 12, 1996 and rendered by Dr. Ranavaya, a physician with no special radiological qualifications, was reread as negative by both Dr. Francke, a physician dually qualified as a Board-certified radiologist and B reader, and Dr. Gaziano, a B reader. Director's Exhibits 20-22. In weighing the x-ray evidence of record, the administrative law judge rationally accorded greater weight to the preponderance of negative x-ray readings by better qualified physicians. *Adkins v. Director, OWCP*, 958 F.2d 49, 6 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

The administrative law judge correctly determined that claimant could not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) as the record contains no biopsy evidence. The administrative law judge also properly determined that claimant could not establish the existence of pneumoconiosis pursuant to any of the regulatory presumptions referred to in 20 C.F.R. §718.202(a)(3), as this is a living miner's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.305, 718.306, and there is no medical evidence relevant to invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304. We, therefore, affirm the administrative law judge's findings at 20 C.F.R. §718.202(a)(2) and (a)(3).

We next review the administrative law judge's findings at 20 C.F.R. §718.202(a)(4). Claimant specifically contends that the administrative law judge erred in weighing Dr. Zaldivar's opinion. The medical opinion evidence of record consists of the following: Dr. Dahhan found no evidence of pneumoconiosis, and diagnosed respiratory disability and asthma unrelated to coal dust exposure or coal workers' pneumoconiosis. Director's Exhibits 12, 41; Employer's Exhibits 1, 2. Dr. Fino found no evidence of pneumoconiosis, and diagnosed asthma and total disability unrelated to coal mine employment. Director's Exhibit 38; Employer's Exhibits 4, 13. Dr. Castle found no evidence of pneumoconiosis, opined that claimant's pulmonary function test results were

consistent with asthma but not pneumoconiosis, and diagnosed total disability unrelated to coal mine employment. Director's Exhibits 34, 38, 39, 64; Employer's Exhibits 5, 11, 15. Dr. Zaldivar found no evidence of pneumoconiosis, and diagnosed cardiac disease and asthma unrelated to coal mine employment. Dr. Zaldivar also opined that claimant was totally disabled in some of the reports he submitted, and not totally disabled in other reports. Director's Exhibits 34, 39, 64; Employer's Exhibits 8, 9, 16. Claimant specifically argues that the pulmonary function study conducted by Dr. Zaldivar on July 5, 2000 was invalid and that Dr. Zaldivar falsified medical findings relevant to this study's results.[2] The administrative law judge stated:

> As explained in my prior Decision and Order, the Claimant raised serious allegations about the pulmonary function tests performed by Dr. Zaldivar on July 5, 2000. Also, Dr. Zaldivar vacillated back and forth as to whether the Claimant was totally disabled. However, Dr. Zaldivar also presented objective medical evidence in support of his opinions and explained the bases for his opinions during his deposition and in his reports. Consequently, I entitle his opinion to some weight.

Decision and Order on Remand at 4. The administrative law judge thus rationally accorded little weight to Dr. Zaldivar's opinion as he found it to be inconsistent. *See Underwood v. Elkay Mining Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984).

With regard to the remaining relevant medical opinions, the administrative law judge noted that while Drs. Fino, Castle and Dahhan "relied to a certain extent" on Dr. Zaldivar's findings, these physicians "also considered other evidence of record and based their conclusions on their review of the entire record." Decision and Order on Remand at 4. The administrative law judge rationally found the opinions of Drs. Dahhan, Fino and Castle, which included diagnoses of asthma unrelated to coal mine employment, to be well reasoned and well documented as they were based on a review of the entire record and supported by medical discussion and other evidence of record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

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[2] Dr. Zaldivar addressed the assertions of falsification in a supplemental report dated February 19, 2002. Employer's Exhibit 16. Dr. Zaldivar stated that he performed an independent examination of claimant, that the equipment he used to perform the pulmonary function test was sanitary and in excellent working condition, and that he correctly read the pulmonary function test as valid. *Id.*

Further, the administrative law judge permissibly found that the opinions of Drs. Castle, Fino, Dahhan,[3] Zaldivar and Walker,[4] that claimant did not have pneumoconiosis, outweighed the contrary opinions of Drs. Younes and Ranavaya, and the West Virginia Occupational Pneumoconiosis Board.[5] Director's Exhibits 11, 19, 34, 38, 39, 41, 60, 64; Employer's Exhibits 2, 4, 5, 8, 9, 11-13, 15, 16; Claimant's Exhibits 2, 3. Specifically, the administrative law judge noted that the tests performed during Dr. Younes's examination did not support his diagnosis of chronic obstructive lung disease due to occupational dust exposure. The administrative law judge stated that Dr. Younes "read the x-ray as demonstrating no pneumoconiosis, and the pulmonary function test demonstrated marked improvement after administration of the bronchodilator. Such improvement has been explained by other highly qualified physicians as being inconsistent with pneumoconiosis." Decision and Order on Remand at 5. Thus, the administrative law judge properly found that Dr. Younes's diagnosis of chronic obstructive lung disease due to occupational dust exposure was not reasoned. *Collins v. J & L Steel*, 21 BLR 1-181, 1-189 (1999). The administrative law judge also properly accorded little weight to Dr. Ranavaya's diagnosis of pneumoconiosis as the physician relied on a positive x-ray that was reread as negative by two highly qualified physicians and because the preponderance of the x-ray evidence was negative. *Akers*, 131 F.3d at

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[3] The administrative law judge found that Drs. Castle, Fino, and Dahhan "have adequately explained why" the pulmonary function study results were "more likely to be evidence of asthma caused by something other than claimant's coal mine employment." Decision and Order on Remand at 5.

[4] The administrative law judge accorded some weight to Dr. Walker's opinion, in which the physician listed occupational dust exposure as an etiology for his finding that claimant did not have pneumoconiosis and for his diagnosis of coronary atherosclerotic disease. Director's Exhibit 60. The administrative law judge explained that "it is plausible that [Dr. Walker] was noting that the x-ray showed no pneumoconiosis while the other evidence showed a condition caused by the Claimant's coal mine employment. Consequently, I find his opinion is entitled to some weight but is not as well-reasoned and well-supported as the opinions of Drs. Castle, Fino, and Dahhan." Decision and Order on Remand at 4. The administrative law judge thus rationally found Dr. Walker's opinion confusing and accorded it less weight. *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984).

[5] Dr. Younes diagnosed chronic obstructive pulmonary disease caused by occupational dust exposure. Director's Exhibit 11. Dr. Ranavaya diagnosed coal workers' pneumoconiosis. Director's Exhibit 19; Claimant's Exhibit 2. The West Virginia Occupational Pneumoconiosis Board found that claimant had occupational pneumoconiosis. Claimant's Exhibit 3.

438, 21 BLR at 2-269; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge further rationally found Dr. Ranavaya's opinion to be equivocal, as the physician stated that his diagnosis of pneumoconiosis was "most likely due to" occupational dust exposure. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). The administrative law judge, moreover, rationally found that the opinion of the West Virginia Occupational Pneumoconiosis Board was outweighed by the preponderance of the contrary medical evidence of record. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Finally, the administrative law judge properly found that because Dr. Khan did not note an etiology for his diagnosis of chronic obstructive pulmonary disease, and Dr. Hoffman failed to explain or support his diagnosis of chronic obstructive lung disease with any evidence or rationale, these opinions were not probative of the issue of the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).[6] *See* 20 C.F.R. §718.201; *Collins*, 21 BLR at 1-189; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1989). In light of the foregoing, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), as it is supported by substantial evidence.[7]

As claimant has failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4), we further affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement under Part 718. Thus, we need not address the administrative law judge's findings on disability or disability causation pursuant to 20 C.F.R. §718.204(b) and (c), as a finding of entitlement is precluded in this case. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-5.

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[6] Contrary to claimant's contention, the reports of Drs. Khan and Hoffman are not entitled to additional weight on the basis that they were submitted by treating physicians, as the administrative law judge properly found that these doctors' opinions were not well reasoned or documented. *See* 20 C.F.R. §718.104(d)(5); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993).

[7] Claimant suggests that the opinions submitted by employer should be discredited because employer paid for them. Absent a foundation in the record for a finding of bias on the part of a party's physicians, the fact that a party had opinions prepared for purposes of litigation is not a proper basis for discrediting those opinions. *Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20 (1992); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*); *Stanford v. Valley Camp Coal Co.*, 7 BLR 1-906 (1985). We thus reject claimant's suggestion.

Accordingly, the administrative law judge's Decision and Order on Remand – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge